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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,398	04/15/2005	Ian James Corkhill	102792-413(11034P3)	7545
27389 7590 01/16/2008 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER TYLER, STEPHANIE E	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 01/16/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,398

Applicant(s)

CORKHILL ET AL.

Examiner

Stephanie E. Tyler

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Malek (4,805,839).

The Malek reference discloses an overcap (10) having a wall (12) all capable of being attached to a container (11), a button (13) having an actuating means (15, col.3, lines 65-67) and a cavity (31) in the bottom thereof adapted to sealingly receive the free end of an aerosol valve stem (32) having a hollow bore (33) which is in flow communication with an orifice (19) in the top of the button (13) for releasing a pressurized liquid to be atomized, the orifice (19) being coaxial with the central long axis (36) of the cavity (31) and bore (33) and, the cross-section of the orifice (19) being perpendicular to the central long axis of the cavity and bore (see fig.3), and a hinge attaching (14) the button (13) to the wall (12), such that the configuration of the hinge (14) causes the liquid escaping from the orifice (19) to be dispensed along the central long axis (36) of the cavity (31) as it is atomized into an aerosol spray pattern, characterized in that the wall (12) provides the sole means for attaching the overcap (10) to the container (11).

RE: claim 2 the hinge (14) is a torsion hinge.

RE: claim 3 a set of dies (80,90,100) dies for producing an overcap (10) having an actuating mean (15, col.3, lines 65-67) and a cavity (31) in the bottom thereof adapted to sealingly receive the free end of an aerosol valve stem (32) having a hollow bore (33) which is in flow communication with an orifice (19) in the top of the body for releasing a pressurized liquid to be atomized, the orifice (19) being coaxial with the central long axis (36) of the cavity (31) and bore (33) causes the liquid escaping from the orifice (19) to be dispensed along the central long axis (36) of the cavity (31) as it is atomized into an aerosol spray pattern and the central long axis (36) of the aerosol spray pattern, wherein the wall (12) provides the sole means for attaching the overcap (10) to the container (11) consisting of, in combination with: A) a male die (80) for forming at least the cavity (46) portion of the button (40) and having a first upper surface (41'), coaxial with the central long axis (45) of the cavity (46), for forming the portion of the cavity (46) closest to the orifice (44) and B) at least one other die (90) for forming the remainder of the button (40), including the orifice (44), wherein any one of such dies (80,90,100) has a cylindrical extension (91) which is coaxial with the central long axis (45) of the cavity (46) and having a flat surface (95) for contact with the first surface (41') of the male die (80) to form the orifice (44) when the dies (80,90,100) are brought together coaxial with the central long axis (45) of the first upper surface (41') of the male die (80) and the flat surface (95) of the other die (90) to form the button (40), the orifice (44) being coaxial with respect to the central long axis (85) of the die (90) forming the cavity (46) and, the cross-section of the orifice (19) being perpendicular to the central long axis of the cavity and bore.

Response to Arguments

3. Applicant's arguments filed 11/6/2007 have been fully considered but they are not persuasive. The claims are silent to any structure that differentiates from the Malek reference.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Demarest (5,791,524) reference is another type of overcap that is capable of being attached to a container.

Application/Control Number:
10/525,398
Art Unit: 3754

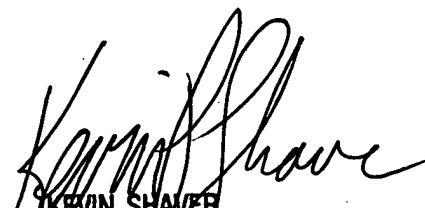
Page 5

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie E. Tyler whose telephone number is 571-272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SET


KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700